

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

PEACOCK PRODUCTIONS OF NBC UNIVERSAL MEDIA, LLC
Employer

and

Case 02-RC-092111

WRITERS GUILD OF AMERICA EAST, INC.
Petitioner

ORDER

Employer's Request for Review of the Regional Director's Decision and Direction of Election is granted as it raises substantial issues with regard to the supervisory status of the freelance and run-of-show producers.¹

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER

Dated, Washington, D.C., June 12, 2013

¹ The Employer argues that the Board lacks a quorum because the President's recess appointments of two current Board members were constitutionally invalid. We reject this argument for the reasons stated in *Bloomington, Inc.*, 359 NLRB No. 113 (2013).

We likewise reject the Employer's related contention that the Regional Director would lack authority to process representation petitions if the Board lacked a quorum. The Board's delegation of its decisional authority in representation cases to Regional Directors dates back to 1961 and has never been withdrawn. See 26 Fed. Reg. 3889 (May 4, 1961). Consistent with the 1961 Delegation, NLRB Regional Directors remain vested with the authority to conduct elections and certify their results, regardless of the Board's composition at any given moment. Furthermore, in *New Process Steel*, the Supreme Court expressly stated that such delegations were not affected by its decision, and, following that decision, no fewer than three courts of appeals have upheld the principle that Board delegations of authority to non-members remain valid during a loss of quorum by the Board. See *New Process Steel L.P. v. NLRB*, 130 S.Ct. 2635, 2643 n.4 (2010); *Frankl v. HTH Corp.*, 650 F.3d 1334, 1354 (9th Cir. 2011); *Osthus v. Whitesell Corp.*, 639 F.3d 841, 844 (8th Cir. 2011); *Overstreet v. El Paso Disposal, LP*, 625 F.3d 844, 853 (5th Cir. 2010).